

**RETURN DATE: JUNE 29, 2021 : SUPERIOR COURT**  
**MARK BOUCHER, ET AL. : JUDICIAL DISTRICT OF LITCHFIELD**  
**V. : AT TORRINGTON**  
**BROOKE NIHAN, ET AL. : JUNE 2, 2021**

**COMPLAINT**

**Common Facts**

1. Plaintiff Mark Boucher is an individual residing at 77 Brookfield Road, Harwinton, CT 06791.
2. Plaintiff Angela Boucher is an individual residing at 77 Brookfield Road, Harwinton, CT 06791.
3. Defendant Brooke Nihan is an individual residing at 55 Brookfield Road, Harwinton, CT 06791.
4. Defendant MaryBeth Griffin is an individual residing at 55 Brookfield Road, Harwinton, CT 06791.
5. Nonparty Scott D. Law is an individual who performs landscaping services in Connecticut as a sole proprietor under the trade name American Lawnscape.
6. Nonparty Ruffy's Paving & Landscaping, Inc., is a corporation formed under the laws of Connecticut that performs landscaping services in Connecticut.
7. Plaintiffs are owners of residential real property located at 77 Brookfield Road, Harwinton, CT 06791 (hereinafter the "Boucher property").
8. Upon information and belief, Defendants are owners of residential real property located at 55 Brookfield Road, Harwinton, CT 06791 (hereinafter the "Nihan/Griffin property").
9. The Boucher property shares a boundary with the Nihan/Griffin property.

10. The Boucher property contains a wooded wetlands area located at or near the boundary between the Boucher property and the Nihan/Griffin property.

11. In or before May 2020, Defendants hired Scott D. Law to perform tree removal services.

12. In or before May 2020, Scott D. Law removed at least twenty-seven (27) trees on the Boucher property within and/or near the aforementioned wooded wetlands area.

13. As a result of the felling of the trees, the residence on the Nihan/Griffin property became visible from the Boucher property when it had not been before.

14. Accordingly, the removal of the trees fundamentally altered the privacy that Plaintiffs had enjoyed since 1997, when they began living at the Boucher property.

15. Additionally, the aforementioned wooded wetlands area was protected as a designated wetlands.

16. Accordingly, pursuant to environmental law and/or regulation, Plaintiffs may now be required to remediate the wooded wetlands area and/or be subject to other liability.

17. After the felling of the trees, Plaintiffs contacted Defendants.

18. Defendants recommended that Plaintiffs make a proposal as to how to resolve the situation.

19. Plaintiffs requested that Defendants refrain from reentering the Boucher property while Plaintiffs formulated their proposal.

20. Nevertheless, shortly afterwards, Rafy's Paving & Landscaping, Inc., felled a tree on the Nihan/Griffin property that fell onto the Boucher property, damaging two more of Plaintiffs' trees.

### **Count One – Negligence**

21. Defendants acted negligently and/or carelessly in one or more of the following ways:

- a. IN THAT they directed Scott D. Law and Rafy's Paving & Landscaping, Inc., to fell Plaintiffs' trees and/or to fell trees on the Nihan/Griffin property that damaged Plaintiffs' trees;
- b. IN THAT they hired unskilled agents, servants, and/or employees in Scott D. Law and Rafy's Paving & Landscaping, Inc.;
- c. IN THAT they failed to properly supervise Scott D. Law and Rafy's Paving & Landscaping, Inc.;
- d. IN THAT they continued to retain Scott D. Law and Rafy's Paving & Landscaping, Inc., once it became apparent that the latter were unskilled.

22. As a result of said negligence and/or carelessness, Plaintiffs suffered damages and losses to their property.

### **Count Two – Vicarious Liability for Scott D. Law and Rafy's Paving & Landscaping, Inc.'s Negligence**

23. Scott D. Law and Rafy's Paving & Landscaping, Inc.'s felling and/or damaging of Plaintiffs' trees was negligent and/or careless.

24. Scott D. Law and Rafy's Paving & Landscaping, Inc.'s conduct also constitutes negligence per se under General Statutes § 22a-16.

25. As a result of said negligence and/or carelessness, Plaintiffs suffered damages and losses to their property.

26. At all times mentioned, Scott D. Law and Rafy's Paving & Landscaping, Inc., were acting as agents, servants, and/or employees of Defendants.

27. Accordingly, Defendants are vicariously liable for the negligence and/or carelessness of Scott D. Law and Rafy's Paving & Landscaping, Inc.

**Count Three – Violation of the Connecticut Environmental Protection Act**

28. Plaintiffs' trees and the wooded wetlands area are natural resources of the state.

29. Scott D. Law and Rafy's Paving & Landscaping, Inc.'s felling and/or damaging of Plaintiffs' trees without legal authority or permission was an unreasonable act in that they, inter alia, violated the Inland Wetlands and Watercourses Act, General Statutes § 22a-36 et seq., by not seeking or obtaining permits to conduct a regulated activity of clearing vegetation in a wetland.

30. Scott D. Law and Rafy's Paving & Landscaping, Inc.'s felling and/or damaging of Plaintiffs' trees within the regulated area therefore constitutes an unreasonable harm to the public trust in the natural resources of the state in that, inter alia, the trees provided mature canopy habitat and their removal eliminated the shade, making growth by invasive species more likely and therefore constitutes a violation of the Connecticut Environmental Protection Act, General Statutes § 22a-16.

31. Defendants directly violated § 22a-16 in that they directed and/or permitted Scott D. Law and Rafy's Paving & Landscaping, Inc., to engage in the aforementioned conduct.

**Count Four – Vicarious Liability for Scott D. Law and  
Rafy's Paving & Landscaping, Inc.'s Violation of  
the Connecticut Environmental Protection Act**

32. Plaintiffs' trees and the wooded wetlands area are natural resources of the state.

33. Scott D. Law and Rafy's Paving & Landscaping, Inc.'s felling and/or damaging of Plaintiffs' trees without legal authority or permission was an unreasonable act in that they, inter alia, violated the Inland Wetlands and Watercourses Act, General Statutes § 22a-36 et seq., by not seeking or obtaining permits to conduct a regulated activity of clearing vegetation in a wetland.

34. Scott D. Law and Rafy's Paving & Landscaping, Inc.'s felling and/or damaging of Plaintiffs' trees within the regulated area therefore constitutes an unreasonable harm to the public trust in the natural resources of the state in that, inter alia, the trees provided mature canopy habitat and their removal eliminated the shade, making growth by invasive species more likely and therefore constitutes a violation of the Connecticut Environmental Protection Act, General Statutes § 22a-16.

35. At all times mentioned, Scott D. Law and Rafy's Paving & Landscaping, Inc., were acting as agents, servants, and/or employees of Defendants.

36. Accordingly, Defendants are vicariously liable for the acts and/or omissions of Scott D. Law and Rafy's Paving & Landscaping, Inc.

### **Count Five – Timber Trespass**

37. Plaintiffs owned and possessed the Boucher property.

38. Defendants directed or authorized Scott D. Law and Rafy's Paving & Landscaping, Inc., to invade, intrude upon, and/or enter the Boucher property, or later ratified such conduct.

39. Such invasion, intrusion, and/or entry affected Plaintiffs' exclusive possessory interest.

40. Such invasion, intrusion, and/or entry was done intentionally.

41. As a result of the intrusion and the felling and damaging of Plaintiffs' trees, Plaintiffs have suffered direct injury, including the diminution in value of the Boucher property.

### **Count Six – Vicarious Liability for Scott D. Law and Rafy's Paving & Landscaping, Inc.'s Timber Trespass**

42. Plaintiffs owned and possessed the Boucher property.

43. Scott D. Law and Rafy's Paving & Landscaping, Inc., invaded, intruded, and/or entered the Boucher property, which affected Plaintiffs' exclusive possessory interest.

44. Such invasion, intrusion, and/or entry was done intentionally.

45. As a result of the intrusion and the felling and damaging of Plaintiffs' trees, Plaintiffs have suffered direct injury, including the diminution in value of the Boucher property.

46. At all times mentioned, Scott D. Law and Rafy's Paving & Landscaping, Inc., were acting as agents, servants, and/or employees of Defendants.

47. Accordingly, Defendants are vicariously liable for the trespass of Scott D. Law and Rafy's Paving & Landscaping, Inc.

**WHEREFORE**, Plaintiffs claim:

1. Damages, including but not limited to compensatory damages for the diminution in value of the Boucher property;
2. Statutory damages pursuant to General Statutes § 52-560;
3. An order directing Defendants to plant trees and/or shrubbery on the Nihan/Griffin property in order to, within 3-5 years, screen Plaintiffs' view of the Nihan/Griffin residence;
4. An order directing Defendants to pay any fines, penalties, and/or costs that may be incurred by Plaintiffs pursuant to environmental law or regulation in connection with the felling and damaging of Plaintiffs' trees in the wetlands area of the Boucher property;
5. Reasonable costs and attorneys' fees;
6. Interest on any amounts awarded, including pre- and post-judgment interest and an upward adjustment for inflation; and
7. Such other and further relief, at law or in equity, as this Court deems just and proper.

**RESPECTFULLY,**

**PLAINTIFFS,  
MARK BOUCHER AND  
ANGELA BOUCHER**

By:   
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**STATEMENT OF AMOUNT IN DEMAND**

The relief requested by the undersigned Plaintiffs in this action is in excess of Fifteen Thousand Dollars (\$15,000), exclusive of interest and costs.

**RESPECTFULLY,**

**PLAINTIFFS,  
MARK BOUCHER AND  
ANGELA BOUCHER**

By:   
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STATE OF CONNECTICUT)

) ss: Harwinton

June 3, 2021

COUNTY OF LITCHFIELD)

Then and there, by virtue hereof, and by direction of the plaintiff's attorney, I left a true and attested copy of the within original WRIT, SUMMONS-CIVIL, COMPLAINT AND STATEMENT OF AMOUNT IN DEMAND with my endorsements thereon as follows:

At the usual place of abode of **BROOKE NIHAN**, at 55 Brookfield Road, Harwinton, CT., on June 3, 2021.

At the usual place of abode of **MARYBETH GRIFFIN**, at 55 Brookfield Road, Harwinton, CT., on June 3, 2021.

The within is the original WRIT, SUMMONS-CIVIL, COMPLAINT AND STATEMENT OF AMOUNT IN DEMAND with my doings hereon endorsed.

ATTEST:

  
\_\_\_\_\_  
JULIANNE INGHAM  
CT STATE MARSHAL  
LITCHFIELD COUNTY

FEES:

Services	\$ 60.00
Copies	22.00
Endorsements	3.20
Travel	<u>11.80</u>
	\$ 97.00